

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Donaghy	Team: Squad #14	CCRB Case #: 201906410	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/06/2019 10:00 PM	Location of Incident: [REDACTED]	Precinct: 70	18 Mo. SOL 1/6/2021	EO SOL 8/23/2021	
Date/Time CV Reported Tue, 07/09/2019 7:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/22/2019 1:37 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Aalok Kantharia	791	936843	070 PCT
2. DT3 Estharlin Lopez	17248	959766	070 PCT
3. POM Xinping Huang	25338	949120	ESS 06

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Danielle Roventini	02499	933298	ESS 06
2. POM Eric Gutierrez	03293	954903	070 PCT
3. POM David Mercado	11610	952007	ESS 06
4. DT2 Robert Zajac	07443	896804	ESS 06
5. DTS Michael Gannon	4090	934896	ESS 06
6. DTS George Bonner	3001	926653	ESS 06
7. POM Phillip Rossomando	03097	954299	ESS 06
8. DTS Luis Salavarria	04704	944967	ESS 06
9. POM Kyle Brown	16513	957405	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Aalok Kantharia	Abuse: Sergeant Aalok Kantharia entered § 87(2)(b) [REDACTED] in Brooklyn.	[REDACTED]
B.SGT Aalok Kantharia	Abuse: Sergeant Aalok Kantharia searched § 87(2)(b) [REDACTED] in Brooklyn.	[REDACTED]
C.POM Xinping Huang	Force: Police Officer Xinping Huang used physical force against § 87(2)(b) § 87(2)(b) [REDACTED]	[REDACTED]
D.DT3 Estharlin Lopez	Discourtesy: Detective Estharlin Lopez spoke discourteously to § 87(2)(b) § 87(2)(b) [REDACTED]	[REDACTED]
E.DT3 Estharlin Lopez	Abuse: Detective Estharlin Lopez threatened to notify Administration for Children's Services.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
F.DT3 Estharlin Lopez	Discourtesy: Detective Estharlin Lopez spoke discourteously to § 87(2)(b) § 87(2)(b)	

## Case Summary

On July 9, 2019, § 87(2)(b) § 87(2)(b) called 911 and was connected to IAB, where she filed the following complaint on behalf of herself and her § 87(2)(b) § 87(2)(b)-year-old son, § 87(2)(b) § 87(2)(b). On July 22, 2019, the CCRB received this complaint.

On July 6, 2019, at approximately 10:00 p.m., § 87(2)(b) § 87(2)(b) was inside her residence at § 87(2)(b) § 87(2)(b) in Brooklyn, with § 87(2)(b) § 87(2)(b)s friend, § 87(2)(b) § 87(2)(b) § 87(2)(b)-year-old son, § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b)s nephew, known only as § 87(2)(b) § 87(2)(b). § 87(2)(b) was on a phone call with her adult daughter, § 87(2)(b) § 87(2)(b) when officers of the 70<sup>th</sup> Precinct and the Emergency Services Unit (ESU), supervised by Sergeant Aalok Kantharia of the 70<sup>th</sup> Precinct, forcibly entered the residence pursuant to a search warrant (Board Review 01) (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(g) (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(g) Police Officer Xinping Huang of ESU entered § 87(2)(b) § 87(2)(b)s bedroom, and allegedly pushed § 87(2)(b) § 87(2)(b) into the side of a bedframe while placing her into handcuffs (**Allegation C: Force**, § 87(2)(g) § 87(2)(g).

After ESU cleared and secured the residence, Detective Lopez and additional officers from the 70<sup>th</sup> Precinct entered. Detective Lopez explained to § 87(2)(b) § 87(2)(b) that officers had entered pursuant to a search warrant, and that § 87(2)(b) § 87(2)(b) should cooperate with officers in their search. Detective Lopez stated that he was trying to have a conversation with § 87(2)(b) § 87(2)(b) like they are “grown-ass men” (**Allegation D: Discourtesy**, § 87(2)(g) § 87(2)(g). During this same conversation, Det. Lopez asked § 87(2)(b) § 87(2)(b) if he wished for “the kid to go to ACS” (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(g). Detective Lopez made several additional discourteous statements to § 87(2)(b) § 87(2)(b) involving the word “shit” (**Allegation F: Discourtesy**, § 87(2)(g) § 87(2)(g).

§ 87(2)(b), § 87(2)(a) 160.50

The investigation obtained body-worn camera (BWC) footage of this incident, the relevant aspects of which will be discussed in further detail below.

## Findings and Recommendations

**Allegation (A) Abuse of Authority – Sergeant Aalok Kantharia entered § 87(2)(b) § 87(2)(b) in Brooklyn.**

**Allegation (B) Abuse of Authority – Sergeant Aalok Kantharia searched § 87(2)(b) § 87(2)(b) in Brooklyn.**

It is undisputed that officers from ESU and the 70<sup>th</sup> Precinct entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn pursuant to a valid no knock search warrant on July 6, 2019.

Police documentation confirmed that a valid no knock search warrant, search warrant # § 87(2)(b) § 87(2)(b) was issued by Kings County Supreme Court § 87(2)(b) § 87(2)(b) on § 87(2)(b) § 87(2)(b), authorizing any police officer of the City of New York to conduct an all-hours, no-knock search upon § 87(2)(b) § 87(2)(b) in Brooklyn. This warrant is based on proof by affidavit presented by Police Officer Vasilios Vasilopoulos of the 70<sup>th</sup> Precinct indicating that there is probable cause to believe that a firearm, ammunition, and documents relating to the ownership and recent occupation of the location will be found within the residence (Board Review 01).

Though the officer that provided the affidavit for the search warrant was PO Vasilopoulos, it is undisputed that PO Vasilopoulos was not working on July 6, 2019, and was not present for this

search warrant. The search warrant incident file report identifies SGT Kantharia as the supervising officer for this incident, thus the entry and search are pleaded to him (Board Review 05).

New York State Criminal Procedure Law Section 690.50 (Board Review 06) states that a search warrant authorizes a police officer to conduct a search of designated premises for the purpose of seizing property, and to deliver any property obtained to the court which issued the warrant. If the search warrant expressly authorizes entry without notice, officers are not required to give prior notice of authority or purpose to the occupants of the premises to be searched.

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Force – Police Officer Xinping Huang used physical force against** § 87(2)(b) § 87(2)(b)

It is undisputed that PO Huang entered § 87(2)(b) in Brooklyn, during this incident. It is further undisputed that PO Huang placed § 87(2)(b) § 87(2)(b) into handcuffs during that entry, and that he was the sole officer from the ESU entry team that made physical contact with § 87(2)(b) § 87(2)(b).

§ 87(2)(b) (Board Review 07) stated that, at the time that ESU entered Apartment § 87(2)(b) she was alone behind a closed door in her bedroom. § 87(2)(b) § 87(2)(b) heard the sound of footsteps in the hallway outside and went to the door, whereupon she first saw PO Huang, who carried a police shield. § 87(2)(b) § 87(2)(b) stated that, due to her momentum in approaching her door, when it suddenly opened, she continued into PO Huang, and that her forehead struck PO Huang's shield. At the time of the collision, PO Huang was standing still and holding the shield such that § 87(2)(b) § 87(2)(b) could not exit the room into the hallway. PO Huang entered the bedroom, with SGT Roventini of ESU standing in the bedroom door and remaining there for the duration of this interaction. PO Huang flipped over a bedroom table and § 87(2)(b) § 87(2)(b)s entire bedframe, including the box spring and mattress. PO Huang then grabbed § 87(2)(b) § 87(2)(b) by her right arm, twisted it behind her back, then pushed her torso down onto the overturned bedframe. § 87(2)(b) § 87(2)(b) stated that she sustained pain and bruising from her torso impacting against the bedframe. PO Huang then placed § 87(2)(b) § 87(2)(b) into handcuffs.

PO Huang (Board Review 08) stated that the only independent recollection he had of this incident was of entering § 87(2)(b) § 87(2)(b)s bedroom, ordering her to get onto the ground, and placing handcuffs onto her once she was on the ground. PO Huang did not recall § 87(2)(b) § 87(2)(b) making physical contact with a mattress, mattress frame, or bed frame during this incident, and did not recall § 87(2)(b) § 87(2)(b) making physical contact with a police shield. PO Huang stated that he was equipped with a police shield.

SGT Roventini (Board Review 09) stated that she accompanied PO Huang, who she did not believe was equipped with a police shield, during this incident. SGT Roventini stated that she entered the bedroom containing § 87(2)(b) § 87(2)(b) with PO Huang, but that as PO Huang approached § 87(2)(b) she was focused on checking the rest of the room for any additional persons. SGT Roventini did not observe any force or actions taken by PO Huang to place § 87(2)(b) § 87(2)(b) into handcuffs. However, SGT Roventini stated that she believed that PO Huang and § 87(2)(b) § 87(2)(b) were standing throughout the entirety of this incident, and that at no point was § 87(2)(b) § 87(2)(b) placed against a mattress or placed on the ground.

The CCRB obtained a Threat, Resistance, and Injury Worksheet (TRI) from this incident prepared by Lieutenant Leor Reichman of IAB, and the associated Investigating Supervisor's Assessment Report (ISAR) prepared by Captain Ronald Zedalis (Board Review 10). Both reports state that § 87(2)(b) § 87(2)(b) did allege she was struck against a mattress frame during a forcible takedown by PO Huang, and that she sustained bruising from the encounter. Included in the TRI is

a photo that appears to show bruising on § 87(2)(b) § 87(2)(b)'s lower right abdomen.

§ 87(2)(b) § 87(2)(b) obtained treatment at § 87(2)(b) Hospital in Brooklyn for the alleged injuries she sustained during this incident on July 9, 2019, three days after this incident occurred. This treatment is documented in medical records obtained (Board Review 11) and summarized (Board Review 12) by the CCRB. § 87(2)(b) § 87(2)(b) reported that she was a victim of an assault by police, and complained of chest pain and right rib pain. Examination by doctors identified approximately two centimeters of bruising on § 87(2)(b) § 87(2)(b)'s lower right abdomen. § 87(2)(b) § 87(2)(b) was released later that day.

A review of the NYPD body-worn camera deployment roster showed that ESU was not equipped with BWC at the time of this incident (Board Review 13). The earliest BWC footage of this incident is recorded by PO Eric Gutierrez of the 70<sup>th</sup> Precinct (Board Review 14) as he entered the apartment along with other officers of the 70<sup>th</sup> Precinct. At timecode 0:54, PO Gutierrez captures PO Huang standing alone in a bedroom within Apartment 3B, holding § 87(2)(b) who is handcuffed, on her right arm. The underside of a bedframe, which appears to have been tipped onto its side, is visible on the far side of the room. Both PO Gutierrez and § 87(2)(b) § 87(2)(b) are standing upright. At timecode 1:03 PO Huang appears to say, "You got her?" to PO Gutierrez. When PO Gutierrez replies affirmatively, PO Huang exits the apartment.

NYPD Patrol Guide Procedure 221-01 (Board Review 15) states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, members are instructed to consider numerous factors, including the immediacy of the perceived threat or harm to the members of the service, whether the subject is actively resisting custody, and the number of subjects in comparison to the number of officers

§ 87(2)(b), § 87(2)(g)

#### **Allegation (D) Discourtesy – Detective Estharlin Lopez spoke discourteously to § 87(2)(b) § 87(2)(b)**

After ESU exited the apartment, multiple officers from the 70<sup>th</sup> Precinct entered the apartment in order to secure it and conduct a search of the premises. It is undisputed that, at that time, Det. Lopez approached § 87(2)(b) § 87(2)(b) and spoke to him in order to convince him to cooperate with officers in identifying the location of the alleged firearm specified by the search warrant (as discussed in **Allegation A** and **B**).

BWC footage recorded by PO Gutierrez (Board Review 14) captured the conversation between Det. Lopez and § 87(2)(b) § 87(2)(b). During this conversation, § 87(2)(b) § 87(2)(b) was wearing handcuffs, as Apartment § 87(2)(b) had already been secured and cleared by ESU. At timecode 11:50, Det. Lopez states that he is attempting to have a conversation with § 87(2)(b) § 87(2)(b) like they are two, "grown-ass men."

During his CCRB interview, Det. Lopez (Board Review 16) did not have an independent recollection of referring to § 87(2)(b) § 87(2)(b) as a "grown-ass man." However, upon being presented with

the footage of this interaction, Det. Lopez identified himself as the officer captured in the video making that statement. Det. Lopez stated that he referred to § 87(2)(b) § 87(2)(g) as a “grown-ass man” as a respectful way of indicating that he understood § 87(2)(b) § 87(2)(g) knew the consequences of the search warrant, and that he had to make an adult decision about whether to cooperate with officers.

Patrol Guide Procedure No. 200-02 (Board Review 17) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

As discussed in DAO-DCT Case Number 2017-17005 (Board Review 18), the NYPD has held that otherwise discourteous statements that are made when an officer is engaged in a stressful situation or trying to get a chaotic situation under control are not misconduct. However, the NYPD has circumscribed that exception to situations that are so chaotic that the immediate need to maintain order overrides the duty of courteous and professional behavior.

§ 87(2)(b), § 87(2)(g)

#### **Allegation (E) Abuse of Authority – Detective Estharlin Lopez threatened to notify Administration for Children's Services.**

BWC footage recorded by PO Gutierrez (Board Review 14) captured an additional statement made by Det. Lopez to § 87(2)(b) § 87(2)(g) during the same conversation discussed in **Allegation D**. While Det. Lopez was attempting to convince § 87(2)(b) § 87(2)(g) to cooperate with officers in identifying the location of the firearm specified by the search warrant at timecode 16:40, he spoke to § 87(2)(b) § 87(2)(g) about the consequences of not cooperating. Det. Lopez stated, “The minute them supervisors - the minute I go back and tell them, ‘Let’s do what we do,’ that’s it, it’s over. The opportunity is gone. Everyone is coming back, bro. Do you want the kid to go to ACS? You don’t want that.”

During his CCRB interview, Det. Lopez stated that when officers uncover an illegal firearm during the search of an apartment or house in which a minor resides, they are required to make a report to the New York City Administration for Children’s Services (ACS). Det. Lopez stated that, during this incident, he believed that § 87(2)(b) § 87(2)(g) infant son, § 87(2)(b) § 87(2)(g) was a resident of Apartment § 87(2)(b) § 87(2)(g) and further believed that there was a firearm present in the residence.

Though at this point during the incident Det. Lopez and officers of the 70<sup>th</sup> Precinct had not yet located the alleged firearm, the search warrant for the apartment (Board Review 01) established that officers had reason to believe a firearm was present in the apartment at the time of this incident.

According to Patrol Guide Procedure No. 215-03 (Board Review 19), officers must notify ACS when they believe a child has been abused, neglected, or maltreated. The Patrol Guide defines a neglected child as a child under 18 years old whose parent or person legally responsible for their care creates or allows to be created a substantial risk of physical injury other than by accidental means. A person legally responsible includes any person responsible for the child’s care at the relevant time, such as any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

§ 87(2)(b), § 87(2)(g)

**Allegation (F) Discourtesy – Detective Estharlin Lopez spoke discourteously to § 87(2)(b) § 87(2)(b)**

After the conversation discussed in **Allegation D** and **E**, § 87(2)§ 87(2) cooperated with officers and identified the location of a firearm inside the residence. § 87(2)§ 87(2) was arrested and led outside onto § 87(2)(b) in Brooklyn by multiple officers of the 70<sup>th</sup> Precinct, including Det. Lopez and PO Kyle Brown. BWC footage recorded by PO Brown (Board Review 20) captured multiple discourteous statements made by Det. Lopez towards § 87(2)§ 87(2) while § 87(2)§ 87(2) was being placed into a police vehicle for removal from the scene.

At timecode 37:20, Det. Lopez, while speaking to § 87(2)§ 87(2) about how he appreciated his cooperation in identifying the location of the firearm, states, “I respect the fact that you took your family into consideration, because a lot of dudes don’t do shit like that.” At timecode 38:10, when § 87(2)§ 87(2) states that he was close to the firearm during ESU’s entry, and was glad he did not go for it when he heard his door get knocked in, Det. Lopez replies, “Well, I’m glad you ain’t do that, you thought about shit, alright.” Det. Lopez then states that officers had to do a forcible entry, saying, “You watch cop shows, you know how this shit go.” At timecode 39:05, Det. Lopez, when talking about how officers will handle the situation following § 87(2)§ 87(2)(b)s arrest, states, “We got your keys, when we leave here, we are going to safeguard your shit.” § 87(2)§ 87(2) is then placed into the backseat of PO Brown’s unmarked NYPD vehicle. At timecode 42:25, Det. Lopez states that the officers will come, “Take pictures of your shit.”

During his CCRB interview, Det. Lopez stated that he did not have an independent recollection of a conversation taking place between himself and § 87(2)§ 87(2) on § 87(2)(b) in Brooklyn, and further did not recall any of the statements documented above. However, upon being presented with the BWC footage of this incident, Det. Lopez identified himself as the officer who made each of the statements towards § 87(2)§ 87(2) described above. Det. Lopez stated that, based on his own personal experience and his time as an officer in the NYPD, he believed that speaking in what he feels is relatable vernacular and using language like, “shit,” can enable him to more effectively communicate with individuals such as § 87(2)§ 87(2)(b). Det. Lopez stated that his use of language in this incident was never intended to be disrespectful towards § 87(2)§ 87(2)(b).

Patrol Guide Procedure No. 200-02 (Board Review 17) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

As discussed in DAO-DCT Case Number 2017-17005 (Board Review 18), the NYPD has held that otherwise discourteous statements that are made when an officer is engaged in a stressful situation or trying to get a chaotic situation under control are not misconduct. However, the NYPD has circumscribed that exception to situations that are so chaotic that the immediate need to maintain order overrides the duty of courteous and professional behavior.

§ 87(2)(b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)
- SGT Kantharia has been a member-of-service for sixteen years and has been a subject in three CCRB complaints and nine allegations, none of which were substantiated. SGT Kantharia's CCRB history does not reflect any patterns pertinent to this investigation.
- PO Huang has been a member-of-service for eleven years and has been a subject in six CCRB complaints and six allegations, none of which were substantiated. PO Huang's CCRB history does not reflect any patterns pertinent to this investigation.
- Det. Lopez has been a member-of-service for five years and has been a subject in seven CCRB complaints and eighteen allegations, none of which were substantiated. Det. Lopez has been or is the subject of discourtesy allegations in four other CCRB cases:
  - 201703855 involved an allegation of discourtesy action, and was closed as unsubstantiated.
  - 201802980 involved allegations of discourtesy word and offensive language, which were closed as mediated.
  - 201902210 involved an allegation of discourtesy word, and was closed as unsubstantiated.
  - 201910915 involves an allegation of discourtesy word, and to date this case is still open.

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) § 87(2)(b) filed a Notice of Claim with the City of New York and cited that she was subjected to personal and physical injuries, an unlawful seizure, false arrest and imprisonment; malicious prosecution, abuse of process, negligence, intentional and negligent infliction of emotional distress, harassment, unconstitutional conditions of confinement, and to a deprivation of constitutional, civil and common law rights. As a result of the officers' actions, § 87(2)(b) § 87(2)(b) experienced personal, physical, and emotional injuries, pain and suffering, fear, and invasion of privacy, psychological pain, emotional distress, mental anguish, embarrassment, and humiliation, and sought \$1,000,000 as redress (Board Review 23). The status of the 50-H hearing remains unknown.
- According to the Office of Court Administration (OCA), § 87(2)(b) § 87(2)(b) has no history of convictions in New York City (Board Review 24).
- § 87(2)(b)



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Squad No.: 14

Investigator: Matthew Donaghy Inv. Matthew Donaghy August 23, 2021  
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel September 20, 2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date